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CORNELIUS, F. A.

—
CICERO'S TREATMENT
OF THE LOCUS COMMUNIS

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CICERO'S TREATMENT OF THE LOCUS COMMUNIS

IN HIS RHETORICAL WORKS

BY

FLORENCE AUGUSTA CORNELIUS.

A THESIS SUBMITTED FOR THE DEGREE

OF

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CONTENTS.

Introduction	page <u>1.</u>
Definition	" <u>3.</u>
Discussion: Purpose	" <u>4.</u>
Mode of treatment:	
a. Choice of line of argument	" <u>5.</u>
b. " " locus communis	" <u>6.</u>
c. Treatment	" <u>7.</u>
Orator	" <u>8.</u>
Importance	" <u>8.</u>
Place in oration	" <u>9.</u>
Class of discourses	" <u>9.</u>
Summary	" <u>9.</u>
Resume of constitutiones with their loci communes	" <u>12-</u>
Examples under "de scripto"	" <u>17.</u>

"Pacis est comes otique socia et jam bene constitutae civitatis quasi alumna quaedam eloquentiae."Therefore; says Aristotle; when the tyrants had been expelled from Sicily, and the people were seeking restitution of property through the law courts, then first, being sharp and controversial by nature, the Sicilians, Corax and Tisias, wrote treatises on oratory; before this none had spoken according to rule and method; still many had spoken accurately, and had written out their speeches; and discussions on well known subjects had been prepared in writing by Protagoras, which are now called loci communes; Gorgias, too, did this, writing praise and censure of various things, because he thought it was the especial province of the orator to be able to magnify a subject by praise or depreciate it by adverse criticism. Antiphon the Rhamnusian wrote things of a similar nature, and Thucydides, who heard him speak in his own defence, says that none had ever pleaded a capital charge better than he. Among the ancients, all those who sought a thorough knowledge of the science of legal discourse and a fluent use of it were accustomed to discuss general questions from the stand-point of each side; these discussions they had ready for use when circumstances demanded. But now it is considered the especial practice of the philosophers. They and the rhetoricians have plundered the orator of his ancient prerogatives. 'Quoniam de nostra possessione depulsi, in parvo et eo

litigioso praediolo relictī sumus, et aliorum patrīni, nostra tenere tuerique non potuimus; ab illis, (quod indignissimum est) qui in nostrum patrimonium irruperunt quod opus est nobis mutuumur.*

Servius Galba, who was preeminent in his time, was indisputably the first Latin orator to make use of the especial and - lawful resources of orators; viz.: of leaving the line of argument for the sake (1) of beautifying his discourse, (2) of -- pleasing and moving the feelings, (3) of using pathetic appeals and loci communes. § Publius Rutilius Rufus once told of Galba's winning an adjourned case by the use of "querelis et miseratōnibus"; in which Laelius had been unsuccessful although he had spoken as usual with careful preparat^on and with elegance. "From this of Rutilius we may draw the conclusion that although there are two great points of merit in an orator, (1) subtle disputation with the aim of setting forth the facts of the case, (2) impressive action tending toward moving the feelings, that which inflames the judge is more effective than that which instructs" # "Augendis vero rebus et contra abiciendis nihil est quod non perficere potest oratio."!

The above, although not mentioning loci communes, applies to them in part, as do many of Cicero's disc^ussions of "amplificatio"; for although not every "amplificatio" is a locus communis, all loci communes come under the head of "amplificatio";

*De Or. III, 108.

†Br. 82.

#Br. 88-89.

!Orator 127.

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"αὐξήσις". "Duae partes orationis sunt maxime luminosae et quasi actuosae; quarum alteram in universae generis quaestione pono, quam, ut supra dixi, Graeci appellant ἀείρις; alteram in augendis amplificandisque rebus, quae ab eisdem αὐξήσις est nominata. Quae etsi aequibilliter toto corpore orationis fusa esse debet, tamen in communibus locis maxime excellit."*

In every case part of the argument is connected with this case alone, and so deduced from it that it cannot be satisfactorily transferred to others of the same kind; but part is more general, and suited either to all cases of the same kind, or to many cases. Those which may be transferred to many cases we call loci communes. § They seem the same in many cases, but in each - they are so treated as to receive an individual coloring, thus appearing to be inherent in the case at issue. ¶ They (1) attack faults and vices, (2) make complaint and accusation of an incontrovertible character, as against a traitor, embezzler, or parricide. Such loci communes must be used after the charge has been proven, otherwise they have no effect. (3) They pray for pardon or pity; (4) embody general discussion on both sides of a given question; § (5) enlarge upon virtue, duty, equity, dignity, utility, honor, shame, reward, penalty, etc., on both sides, and should show power and skill. ! "Omnia enim ornamenta elocutionis in quibus et suavitatis et gravitatis plurimum consistit, et omnia, quae in inventione verborum et sententiarum aliquid habent

*Or. 125, 126.

§ De Inventione II, 47-51.

¶ Or. 126; De Or. III, 106.

! De Or. III, 106.

dignitatis in communes locos conferuntur."*

Loci communes may be divided into two classes, but the treatment of these is practically the same: (1) They enlarge upon some settled fact ("certae rei"); as if one should desire to show that the parricide deserved death. (2) They enlarge upon something doubtful ("dubiae rei"), which, on the other hand, may have some arguments in its favor; for instance, in a case of conjecture it may be argued that suspicions should not be trusted, and vice versa. In the former case, the locus communis should not be used until after the charge has been proven. § Loci communes certi apply to all kinds of cases. #

In Partitiones Oratoriae 71, it is said of "augendi et vituperandi": "Doubtful matters are not proven by these, but certain ones or those assumed as certain are magnified."! In like manner the loci communes of the second class, "dubiae rei", do not prove the matter, but emphasize the view assumed by the speaker.

The end in other arguments is to prove a thing true; in loci communes, truth, but still more "amplitudo"; © in consequence, touching the feelings of judge or audience; the loci communes used to this end, which prove the calumny of the accuser, call for pity, indignation, or the opposite, all come from the greatness of the danger, not the kind of case, so do not apply to every case,

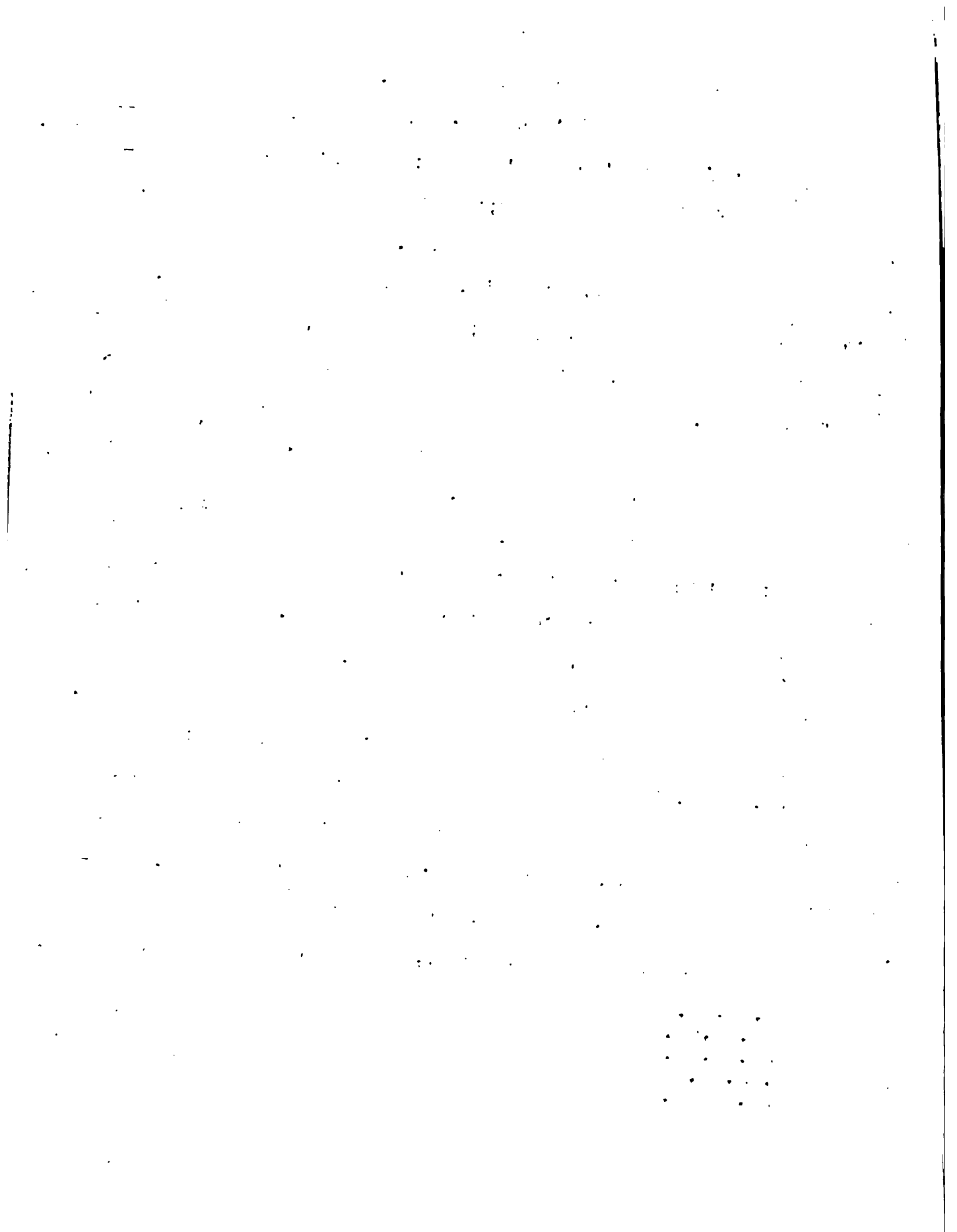
*DEInv.II,49.

§De Inv.II,48.

#De Inv.II,68.

!Part.Or.71.

©De Inv.II,51.



but to every kind of case; they are loci communes certi.*

Loci communes are used to prepare the way for conquestio, when the latter is not itself a locus communis; a digression upon the weakness of man and the power of fortune, delivered with dignity, will incline the hearer toward pity, "cum in alieno malo suam infirmitatem considerabit!§

Another consequence of the aim at amplitudo appears in the following: "A moderate use of loci communes will adorn and -- brighten up a speech, used in a suitable place, when the auditors have been convinced by argument and won over; for it is quite permissible to introduce a general discussion when a point inherent in the case has been carefully treated. Often, too, it refreshes the mind of the hearer.¶ Use specific arguments to convince, general to enforce." In principiis, quibus ut benevoli, ut dociles, ut attenti sint, qui audiant, efficiendum est -- propriis locis. Quae autem consequitur narrationem fides, ea persuadendo efficitur.¶!

"Those cases can be best enlarged upon and adorned which give most opportunity for these digressions."® Similarly, in choosing your line of argument, "When you have taken a view of the whole case and glanced over all possible lines of argument -- ("locis inventis atque instructis") take the line which is

*De Inv. II, 56.

§De Inv. I, 106.

¶De Inv. II, 49.

!Topica 97.

®De Or. 312.

(6)

richest either in arguments or in opportunities for digressions; if you do so, when they spring from the heart of the matter and seem not common or transferable, but wholly an outgrowth from the case in hand, they will have more force.*

Since men are inclined to resist and to resent open persuasion: "The discourse should seem to aim only at instructing, but passages calculated to move should be found throughout, *fusae, sicut sanguis in corporibus*!§

If the case is one which calls for appeal to the emotions, a suitable line of argument will be chosen, but if the matter is petty, or men are so disposed that you can not move them, - avoid the "firebrands of Rhetoric"; unless you wish to incur hatred or derision, - to stir up "a tempest in a tea-pot," (*tragedias in nugis*) to strive to move mountains.¶ Avoid the use of dignified expressions and *loci communes* in an unimportant case, such as one concerning water-pipes before only one judge; but, on the other hand, in a case concerning treason avoid a gentle and simple style. Let your language suit the occasion; "*nec satura jejune nec grandia minuta, nec item contra, sed erit rebus ipsis par et aequalis oratio.*"®

Since there are two kinds ¶ of *loci communes*, one strengthening a doubtful matter, the other, a point already proven, we must

*Or. 47. DeOr. 318-319.

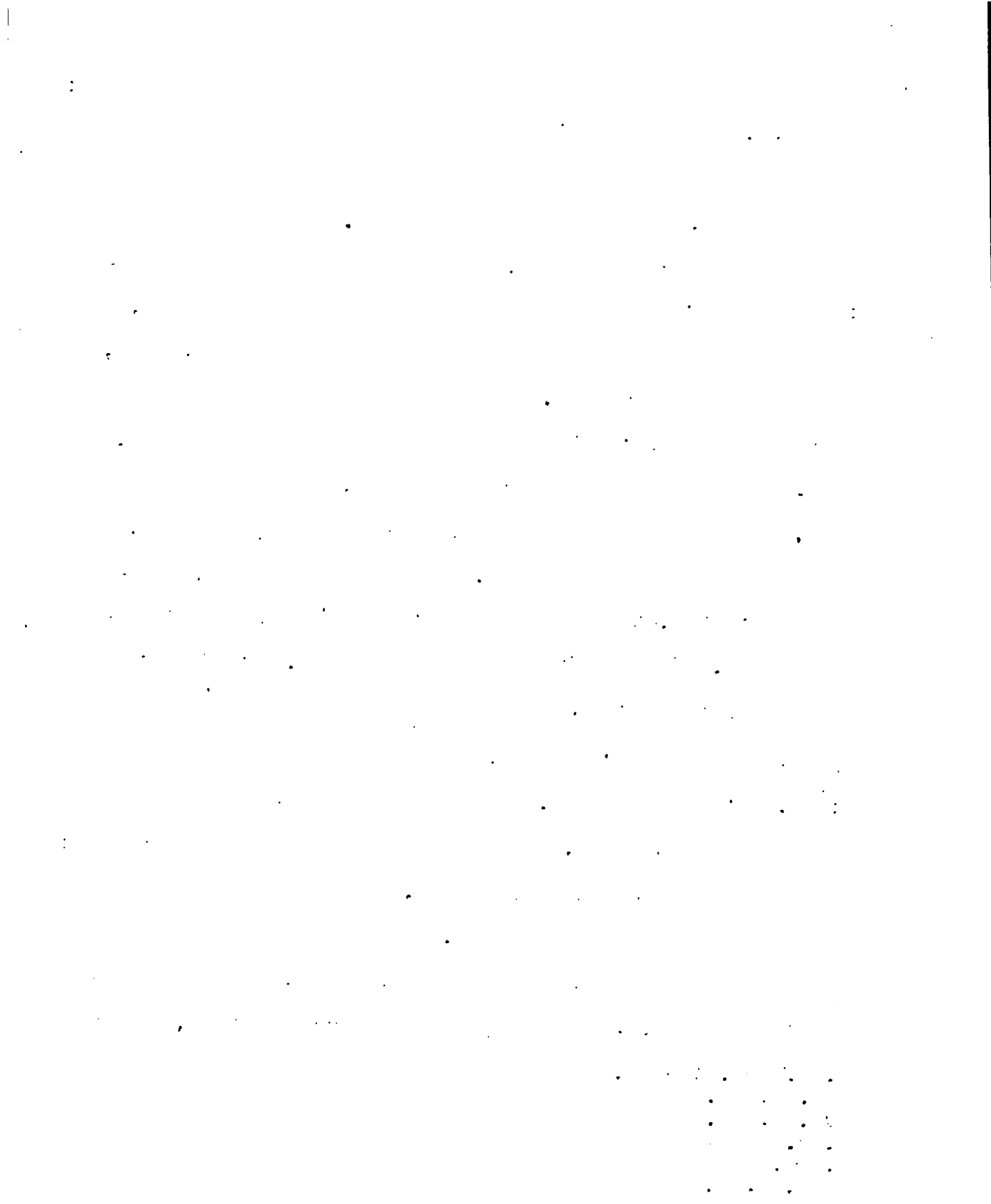
§DeOr. II, 310.

¶DeOr. II, 205.

|Or. 72.

®Or. 123.

¶DeInv. II, 48.



consider which kind is demanded. The loci communes certi, which apply to all kinds of cases can not be prescribed. In many, for instance, we speak for the authority of lawyers, in many against; besides these, we must look out for those which the case provides. These last may possibly be certi loci communes, but will probably apply only to all cases of the same class.

Just as τότοι, prearranged lines of argument, are held in -- mind by speakers to enable them to choose the suitable line -- quickly and easily, so should we ponder over those things that will have to be said in discourses about nature, laws, customs of ancestors, defense, vengeance, etc. If our client has done an act through ignorance or necessity or chance which would not be allowed to those who acted voluntarily, clemency must be -- sought through the plea of ignorance; and here we may dwell up -- on the theme of justice in several ways. §

Since one of the chief ends of the locus communis is to arouse the emotions, among the chief instruments are conquestio and -- indignatio, always, however, used with dignity and fitness. # Conquestio must be brief. " cito enim exarescit lacrima, praesertim in alienis malis. " !

In cases which aim to cause pleasure subjects should be -- chosen which will arouse expectation, admiration and pleasure;

*DEInv. II, 68.

§Or. Part. 131.

#DeInv. II, 48.

!Or. Part. 57.

So the loci communes, as well as the other loci, will be of that nature: in exhortations, enumeration ~~of~~ ~~the~~ and instances of - good and bad, in lawsuits, by the accuser, what will cause anger, by the defendant, what will cause pity, - or, sometimes, the reverse.* Occasionally some consideration that will apply on either side may be used.‡

Loci communes follow the same general rules as other arguments; but the latter are treated with greater exactness, keenness and subtilty, while the former are characterized by -- greater dignity, and by nobler words and sentiments.‡

The orator must display spirit, force and skill in the use of the locus communis. Therefore let no poor and inexperienced speaker attempt it. For loci communes can not be said to be common to all orators as to all cases. Unless they are used by one who by practice has gained great copiousness of diction and - thought, they cannot be treated in the beautiful and dignified manner due them.‡ He must be trained in both philosophy and dialectics,® in order to treat them in a masterly style.

"Summa laus eloquentiae est amplificare rem ornando".‡ "Prebare necesse est, delectare suavitatis, flectere victoriae: nam id unum ex omnibus ad obtinendas causas potest plurimum."+

There is nothing that oratory can not accomplish by magnifying

*Or. Part. 58.

‡De Inv. II, 48.

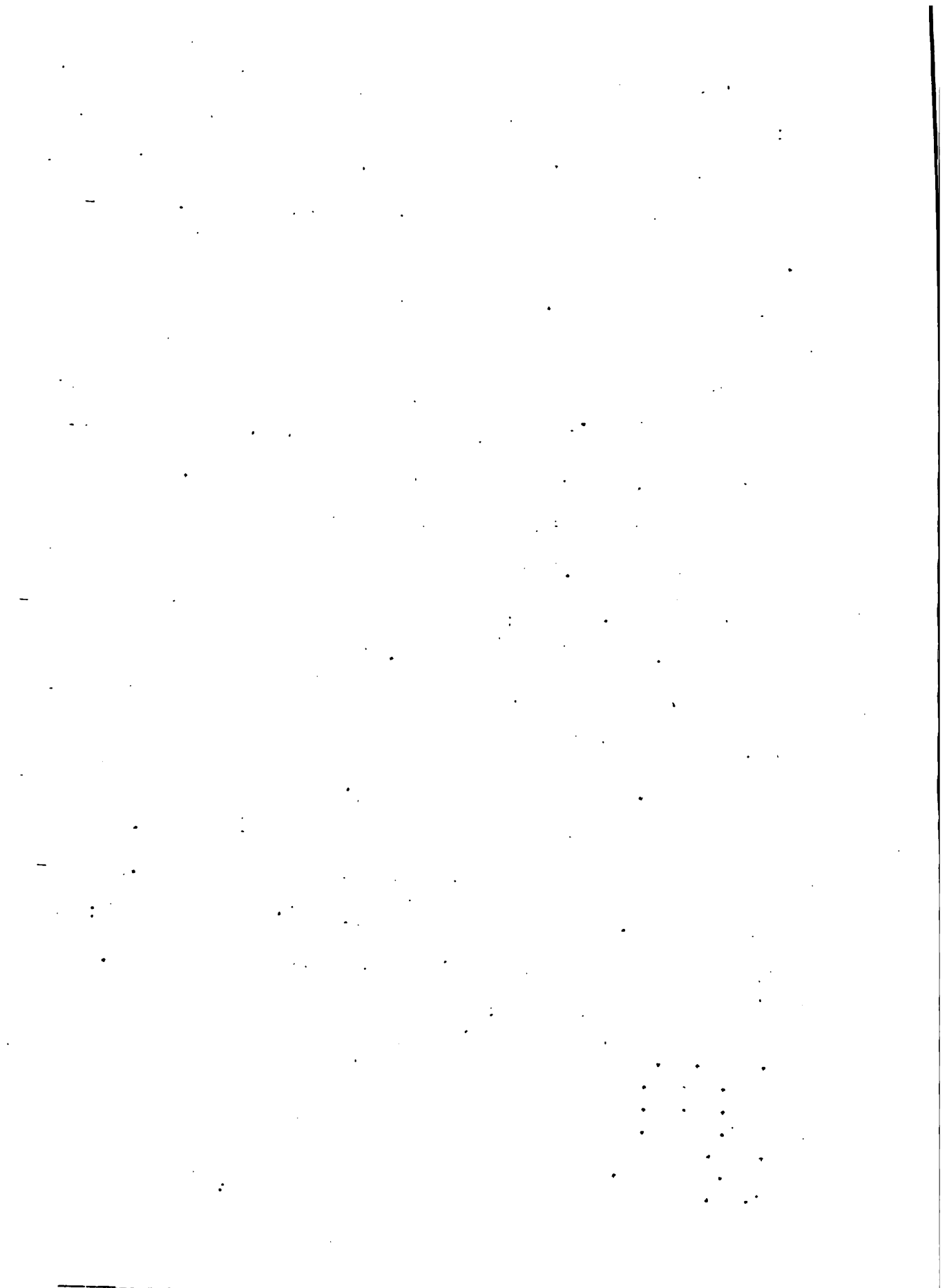
‡De Inv. II, 51.

‡De Inv. II, 50.

®Or. 118.

‡ De Or. III, 104.

+ Or. 69.



some things and depreciating others. This must be used both -- throughout the argument, and especially almost without limit in peroration.*

The principal place for digressions is in the exordium and the peroration, but often it is advantageous to digress from -- the line of argument to introduce them. There is opportunity for digression: (1) When the line of argument has been laid down; (2) when our points have been proved; (3) when another's have been refuted. § In reality, ^{wherever} ~~anywhere where~~ a locus communis will emphasize effectively, it may be used.

The locus communis seems, from the examples given by Cicero, to be most common and most effective in suits at law, especially where the charge is a serious one; but it may be used in -- suits "de scripto", when trying to prove that one or another -- interpretation of the written matter is better. It is quoted as used in orations of every kind. In the Orator Cicero says -- that in rhetorical, flowery discourse, not especially vigorous, loci communes "sine contentione" (without great force) are -- used. #

To summarize: Loci communes are general discussions upon various subjects, which were prepared beforehand by many Greek -- and Roman orators, and used by them whenever opportunity occurred, to increase the effectiveness of their discourses. Some, the

*Or. 128.

§ De Or. II, 311-312.

#Or. 95.

loci communes certi, may be applied to any kind of argument, though not to every argument of each kind. Others may be applied to any argument of a certain kind. For instance, under argumentum definitivum, a man is called arrogant for trying to make words subject to his will.* This may be applied to any case, or constitutio definitiva.

The essentials are: (1) That it enlarge upon some settled fact or something assumed as a fact, § (2) That it apply to all kinds of cases or to all cases of a kind, (3) That it seem to be inherent in the case, (4) That it contribute toward the forcefulness or beauty of the production.

Cicero in his rhetorical works quotes many loci communes -- merely as examples in illustrating their treatment; but, as may be expected from the nature of the subject, he uses few for adornment. In DE Oratore III occurs a long one on pleasure, -- used to emphasize the point that an orator should aim to please without satiating. It is so graceful and so thoroughly Ciceronian in style, that I quote it here: "Difficile enim dictu est, quaenam causa sit, cur ea, quae maxime sensus nostros impellunt voluptate, et specie prima acerrime commovent, ab iis celerrime fastidio quodam et satietate abalienamur. Quanto colorum pulchritudine et varietate floridiora sunt in picturis novis pleraque, quam in veteribus! Quae tamen etiamsi primo adspectu nos ceperunt, diutius non delectant; cum iidem nos, in antiquis tabulis, illo ipso horrido obsoletoque teneamur. Quanto molliores

*De Inv. II, 56.

§De Inv. II, 48. Or. Part. 71.

sunt et delicatiores in cantu flexiones et falsae voculae, quam certae et severae! quibus tamen non modo austeri, sed, si saepius fiunt, multitudo ipse reclamationat. Licet hoc videre in reliquis sensibus; unguentis minus diu nos delectari summa et acerrima suavitate conditis, quam his moderatis; et magis laudari, quod ceram, quam quod crocum clere videatur; in ipso tactu esse modum et mollitudinis et laevitatis. Quinetiam gustatus, qui est sensus ex omnibus maxime voluptuarius, quique dulcitudine praeter ceteros sensus commovetur, quam cito id, quod valde dulce est, aspernatur ac respicit! Quis potionem uti aut cibo dulci diutius potest? cum utroque in genere ea, quae leviter sensum voluptate moveant, facillime effugiant satietatem. Sic, omnibus in rebus, voluptatibus maximis fastidium finitimum est."*

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A resumé of the loci communes suggested under the different constitutiones will illustrate Cicero's treatment of the subject. The constitutio is the point at issue. According to the nature of the point at issue we have constitutiones conjecturales, definitivae, translativae and generales.

I. Constitutio Conjecturalis: Here the question is: Was the deed performed by the accused? The arguments on both sides are strengthened by conjecture. *The loci communes are: (1) Those suggested by the case, as follows: Suspensions should be trusted: vice versa; - rumors should be credited; vice versa; - judicial investigation by torture should be credited; vice versa; - past life should be considered; vice versa; - some past deed cited, accordingly this one probable; vice versa; - cause should be considered; vice versa. (2) Certe loci communes: Of accuser: Atrocity of the deed; wicked should not be ^{punished.} Of defender: -- Slanders of accuser: plea for pity (conquestio) §. Other loci communes applicable to the constitutio conjecturalis are: - common danger if lives of the innocent be exposed to the wicked; ^{or} celestial prodigies; appeal to love for fatherland, gods, parents, wives and children, and to sentiments of honor; ! appeal to cupidity, hatred and revenge; doubtfulness of future; advan-

*De Inv. II, 50-51.
 §Part. Or. 49.
 #Part. Or. 44.
 !Part Or. 58.

tage of guarding against evil fortune.* "No criminal is so mad as not to hide the traces of his deed," and, on the contrary, "Audacity is accompanied by rashness, not by prudence."§ The testimony of a good man is trustworthy; the faithfulness of witnesses is not to be measured by their fortunes. On torture (quaestio): the power of pain; the customs of ancestors and of influential nations; the approbation of learned men.¶

II. Constitutio definitiva: Here, when it has been proven - that the deed was performed, the question is: Is the deed what it is claimed to be? The prosecutor uses the loci communes - which (1) enlarge upon the atrocity of the deed; (2) point out the arrogance of a man who wishes to assume power over words, to do what he pleases, then call his deed by whatever name - suits him; or, in a case "de scripto," to dictate all future wording of documents.® When the deed has been confessed the name should not protect; words are deceitful if intentions are not considered. The defendant will praise the deed for - utility or honesty, and will use in general the same loci communes as the prosecutor, applying them to his case.®

III. Constitutio Translativa: Here the point at issue is - whether the indictment was properly drawn up. The prosecutor

- *Part.Or.96.
- §Part.Or.115.
- ¶Part.Or.117.
- |DeInv.II,52-58.
- ®Br.198.
- §Part.Or.127.

The first part of the paper discusses the importance of understanding the underlying structure of the data. This is particularly relevant in the context of machine learning, where the ability to identify patterns and relationships in the data is crucial for making accurate predictions. The second part of the paper focuses on the development of a new algorithm for solving the problem of finding the minimum variance unbiased estimator (MVUE) for the parameters of a normal distribution. This algorithm is based on the use of the Fisher information matrix and the Rao-Blackwell theorem. The third part of the paper presents a simulation study to evaluate the performance of the proposed algorithm. The results of the simulation study show that the proposed algorithm performs well in terms of both bias and variance, and is able to achieve the minimum variance unbiased estimator for the parameters of the normal distribution.

may use loci communes in enlarging upon the charge that the defendant tries to escape trial and consequent punishment, because he has no confidence in his case.*

IV. Constitutio Generalis§: Deed admitted; question as to its nature.

Constitutio Generalis,

I. Negotialis.

II. Juridicialis.

A. Absoluta. Aequi et iniqui natura.

B. Assumptiva.

1. Comparatio.

2. Relatio Criminis.

3. Remotio.

a. Causa.

b. Res.

4. Concessio.

a. Purgatio.

b. Deprecatio.

x. Imprudentia.

y. Casus.

z. Necessitudo.

Constitutio Negotialis contains a conflict in laws#. The - loci communes will be those suggested by the case, among them probably one on the reliability of lawyers.!

*DeInv. II, 61.

§DeInv. II, 62 &c.

#DeInv. II, 62.

!DeInv. II, 68.

Under Constitutio Juridicialis, Absoluta considers the question of absolute right; here the loci communes will be taken from the nature of the case, if it furnishes opportunity for indignatio or conquestio; utility of law will also be enlarged upon.*

The Constitutio Assumptiva views the deed entirely in the light of attendant circumstances. It has several modes of treatment; the first, Comparatio, claims that the end will justify the deed, and the opposite.† The accuser enlarges upon the uselessness of the deed, and the baseness of the man who will do it, so useless and shameful. The defender claims that no deed can be useless, base or the contrary, without knowledge of its purpose and circumstances; he enlarges upon the good done by this deed or the necessity of it; he pictures the circumstances to auditors so that they think they would have done likewise.‡ For instance, an attempted assault might be described and the killing of the assailant in self-defense. This would not be a locus communis certus, but might be so treated as to apply to all cases of the same kind.

Relatio Criminis, while conceding the deed, throws the blame upon some one else. The loci communes are, of the accuser: The boldness of him, who while not denying the deed, tries to confuse the judge and so go free; the utility of trials; complaint

*De Inv. II, 71.
 †De Inv. II, 71-72.
 ‡De Inv. II, 77.
 !De Inv. II, 78.

against the defendant for taking judgement into his own hands (in punishing the one upon whom he throws the blame);pity for the one unlawfully punished by the accused.Of the defendant: Complaint of the audacity of the one whom he punished.The matter should be judged not from the face of it,but from circumstances: What evils would have befallen his children etc.had he not taken matters into his own hands.*

Remotio is transferring the charge to another.§ The loci communes,besides those suggested by the case,are indignatio on the part of the accuser and the plea on the part of the defendant that since another is guilty he should not be punished.^f

Concessio is owning the deed and begging for pardon.|Purgatio is bringing up excuses for his action on the part of the defendant.Deprecatio is simply praying for clemency.Under Purgatio the chief locus communis of the accuser treats of the opportunity to do wrong that would exist if the cause were to be considered,rather than the deed;he may also enlarge upon the fact that the defendant has confessed.The defendant will complain of ill-luck,will speak of the weakness of man,the power of fortune,the cruelty of his accuser,and claim that intentions,not results,should be considered.

Under Deprecatio,the accuser may use indignatio at the crime,

*DeInv.II,85,86.

§DeInv.II,86.

^fDeInv.II,91.

|DeInv.II,94,&c.

and urge that those should be pitied who are in trouble, not on account of crime, but through ill-fortune.*

Under Juridical cases is considered the matter of rewards and punishments. This gives occasion for numerous loci communes. When a man has asked for reward, his opponent may use - against him the loci communes: Rewards for dutifulness or valor, should be sacred, not given to bad or mediocre men. Men will less desire valor if its rewards are made common, for things rare and hard to gain are most desired. Ancestors who have received rewards (enumerate them) will think their glory lessened. The seeker for reward, after enlarging upon what he has done, will urge the discouragement of others if he is not rewarded. If the reward desired is money, the opponent will declare that it is unbecoming to demand money instead of mere gratitude for services, while the claimant will say that to bicker about money is sordid when a man has done you a favor, and that money is desired only for the honor implied.†

Cases "de scripto" often furnish occasion for loci communes when it is being argued which view of the written matter is better. Cicero treats of these in De Inventiones II, chapters 40 to 50, inclusive. The following are the most general mentioned by him: Concerning laws: Laws must be considered considered in themselves, without reference to the advantage of the opposite side.

*De Inv. II, 109.

†De Inv. II, 114.

On the other side: Laws consist in the will of the writer and common advantage, not in words. Justice should not be hampered by letters, when it is upheld by the will of the writer.*

In many laws many things are understood and must be supplied from other laws. No one can embrace all points in what he writes; but he who is best in distinguishing one thing from another, - writes best. On the other side: He is a foolish writer who can not say all he desires. §

*De Inv. II, 143.

§De Inv. II, 150-152.

INDEX LOCORUM.

De Inventione I, 97, 106.

**De Inventione II, 47-51; 53, 55, 56, 61, 68, 71-108, 109, 114, 121, 125,
143, 147, 150-153.**

De Oratore I, 56 224.

 " **II, 118, 124, 199, 311, 318.**

 " **III, 106.**

Brutus 45-47, 82, 124, 262, 322.

Orator 47, 72, 95, 118, 126.

De Partitione Oratoria 44, 127, 131.

Topica 86, 94, 97.

**The above index does not include examples of loci communes
except where they are so named.**

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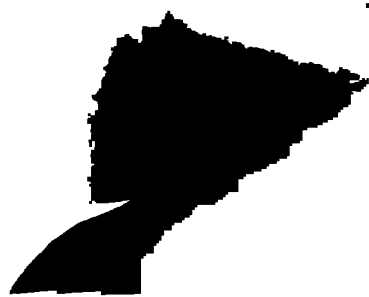
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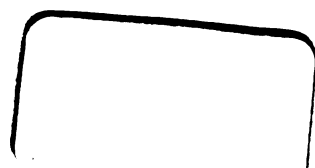
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